

FBI Role in Impeachment Probed

Justice Dept. Looks at Possibly Misleading Testimony in Judge Hastings Case

By Pierre Thomas

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The Justice Department inspector general has been investigating whether the FBI intentionally gave misleading testimony to a judicial panel that was deliberating whether to recommend that then-U.S. District Judge Alcee L. Hastings be impeached.

The Justice Department probe has uncovered evidence that an FBI examiner who worked on the case of Hastings, now a Democratic representative from Florida, vigorously challenged the bureau's laboratory analysis of a key piece of evidence relating to the judge's truthfulness in a bribery trial in the early 1980s. But Justice Department investigators found that FBI supervisors largely ignored the examiner's critique and never provided the dissenting information to Congress, which later removed Hastings from the bench.

The revelation is the first detailed account supporting allegations by FBI whistleblower Frederic Whitehurst about shoddy FBI laboratory work. Whitehurst claims that bureau officials routinely manipulated forensic work and allowed flawed expert testimony during court proceedings if it helped prosecutions.

"It is not just Dr. Whitehurst who has alleged wrongdoing in the FBI crime lab," Sen. Charles E. Grassley (R-Iowa) said yesterday. "... I fear the FBI has covered up the lab's shortcomings."

Documents obtained by The Washington Post in connection with the Hastings investigation raise questions about the bureau's willingness to address criticisms of its laboratory procedures, even when their own employees raised them, Grassley and others said.

"The misrepresentations and misstatements in the transcript (regarding FBI forensic testimony in the Hastings case) . . . represent a glaring pattern of conversion of what should have been

presented as neutral data into incriminating circumstances by complete reversal of established laboratory test data with scientifically unfounded, unqualified and biased testimony," wrote frustrated FBI examiner William A. Tobin in 1989.

Tobin wrote that, while he agreed with the FBI's overall forensic assessment in the Hastings case, he was concerned that the bureau's testimony had gone too far in an apparent attempt to bolster the case against Hastings. Tobin's memorandum noted no fewer than 27 exceptions, or challenges, to



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REP. ALCEE L. HASTINGS
"astounding beyond belief"

bureau testimony against Hastings, Florida's first black federal judge, after he was acquitted of federal bribery charges. The judicial inquiry begun after his acquittal raised allegations of racism from African American leaders.

During an interview with the Justice Department inspector general's office, Tobin reiterated his concerns to investigators, according to sources familiar with the inspector general's ongoing review. He also told investigators that he turned his memorandum in to his supervisor, but the bureau apparently did nothing to address his concerns. In fact, he never heard back from his superiors on the matter, Tobin said. In addition, sources said that investigators have been unable to find Tobin's original forensic report, which should have been used to prepare for the testimony in the Hastings case.

"Alcee Hastings and I have believed for some time that a fair amount of evidence against him was manipulated or manufactured," said Terence Anderson, Hastings's attorney during impeachment proceedings. Hastings called the revelation "astounding beyond belief. I need to understand who withheld this information, why they withheld it and what effect it would have had if it were presented to Congress," which impeached and convicted him.

Whitehurst's attorney, Stephen Kohn, agreed, saying that "if the FBI could put forth false evidence regarding a sitting judge, every American is at risk to FBI lawlessness."

In response to a broad inspector general investigation of the FBI crime laboratory, Justice Department officials have notified at least 50 state and federal prosecutors of potential problems in their cases.

Hastings was charged in 1981 along with friend and Washington lawyer William A. Borders Jr. of engaging in a conspiracy to accept a \$150,000 bribe from an undercover FBI agent posing as the brother of two men convicted of racketeering. In exchange, Hastings was to reduce the men's sentences and return nearly \$1 million in forfeited property.

Borders was convicted of the crime. Hastings, in a separate trial in 1983, was acquitted of the same charges. He has steadfastly maintained his innocence.

But after a 3½-year investigation prompted by an ethics complaint from several of his fellow judges, successive judicial panels concluded that Hastings had not only engaged in a bribery conspiracy, but lied and manufactured evidence at the trial to win acquittal.

Investigators sought to challenge Hastings's truthfulness on a number of fronts.

Hastings testified he was with Borders at the time he was alleged to have taken the bribe in part because he was trying to find a leather shop to repair a men's purse whose strap had broken.

FBI forensic experts were asked to test the strap to see if it could be snapped by accident, as Hastings described, or whether it was too strong and would have had to have been cut. The FBI's lab experts concluded the strap had been cut. The inference was that Hastings had cut the strap in an attempt to concoct an alibi.

Tobin generally agreed with that conclusion but said he was deeply troubled about FBI testimony in the case and believed it "revealed a pattern of complete omission of crucial conditions, caveats, premises and or assumptions which may be viewed as tending toward exculpatory."